

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, July 23, 2003, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** James Ward, Chairman\*  
Robert Bartholomew  
Paul Schultz  
Walter Tarmann

\*Note: Mr. Ward arrived late, at approximately 7:15 p.m. Since there was no vice-chairman, the meeting was called to order at 6:45 p.m., by the Secretary to the Board, Mary Finet. Mr. Tarmann then made the following motion:

Mr. Tarmann                      *I move that Bob Bartholomew be made the acting vice-chairman for this evening.*

The motion was seconded by Mr. Schultz and carried unanimously with three yes votes.

**BOARD MEMBERS ABSENT:** Mary Voelker

**SECRETARY TO THE BOARD:** Mary E. Finet

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Edward Mies, BA03:063, petitioner  
Tom Dennis, Arrowood Builders, BA03:063, builder  
Atty. Rodney W. Carter, BA03:066, representing the petitioner  
Keith Markano, Airport Manager, BA03:066  
Allen and Lisa Mies, BA03:067, petitioners  
Daniel and Donna Willems, BA03:064, petitioners  
James and Karen Meixner, BA03:064, neighbors  
Stephen and Colleen Stenholt, BA03:065, petitioners  
Gayle and Adam Kugler, BA03:057, petitioners  
Greg Proudlove, BA04:049, petitioner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Bartholomew                      *I make a motion to approve the Summary of the Meeting of June 25, 2003.*

The motion was seconded by Mr. Tarmann and carried unanimously.

**NEW BUSINESS:**

**BA03:066 SPRINT PCS**

Mr. Tarmann

*I move to hold this hearing in abeyance until the meeting of August 27, 2003. This will allow the Board of Adjustment to consider the Waukesha County Airport Commission's recommendation, which they will be making at their meeting of August 13, 2003, before making their decision on this request for a variance from the Airport Height Limitation Zoning Ordinance.*

The motion was seconded by Mr. Schultz and carried unanimously with three yes votes. Note: Mr. Ward was not present for this hearing or for the vote.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested height variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. Self-created hardships or financial hardships are not justification for the granting of a variance. In addition, the Waukesha County Airport Commission has already reviewed this request once and recommended denial, apparently because they believe the existing cellular tower would be a hazard to navigation. Therefore, the Planning and Zoning Division staff is recommending denial of the requested height variance.

**BA03: 063 EDWARD MIES**

Note: Mr. Ward was present for this hearing and for all of the subsequent hearings.

Mr. Schultz

*I make a motion to adopt the staff's recommendation for denial, as stated in the Staff Report, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously with four yes votes.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

The accessory building floor area ratio limit of 3% of the lot size, which in this case permits a total accessory building floor area of 1,183 sq. ft., allows a reasonable use of the property and varying that requirement would not be in conformance with the purpose and intent of the Ordinance. The proposed second garage, in combination with the existing detached garage, would exceed the footprint of the residence and would not be in keeping with other development in the area. If the existing garage does not meet the petitioner's storage needs, additional storage area could be created on the property, without the need for variances or special exceptions, by utilizing one of the following options:

1. The existing detached garage could be removed and a new, larger detached garage, with a maximum floor area of 1,183 sq. ft., could be constructed.
2. A second detached garage, with a maximum floor area of 502 sq. ft., could be constructed.
3. An addition to the existing detached garage, with a maximum floor area of 502 sq. ft., could be constructed.
4. An attached garage could be constructed on the north side of the residence.

Therefore, despite the fact that this request is for a special exception, rather than a variance, and a special exception does not necessarily require the demonstration of an unnecessary hardship, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

**BA03:067 ALLEN & LISA MIES**

Mr. Schultz

*I make a motion to deny the request for offset, shore setback, and floodplain setback variances to permit the construction of a detached garage, but to approve variances from the road setback, floor area ratio, and open space requirements and a special exception from the accessory building floor area ratio requirement to permit the construction of a detached garage, subject to the following conditions:*

1. *The garage must be located on the south side of Geitzen Dr., at least 15 ft. from the centerline of the road right-of-way. This will place it outside of the 30 ft. wide established road right-of-way.*
2. *The garage must meet the minimum required offset of 6.66 ft. from the side lot lines.*
3. *The main level of the garage shall have a maximum size of 624 sq. ft. The garage may have a storage area in an exposed lower level, which would not be counted against the floor area ratio.*
4. *The existing non-conforming "bath house and storage building" must be removed from the property, no later than three months after the completion of the detached garage.*
5. *Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed detached garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.*
6. *Prior to the issuance of a zoning permit, a complete set of plans for the detached garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.*

7. *If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of a detached garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.*

*The reasons for this decision are as follows:*

*The proposed garage on the north side of the road would require shore and floodplain setback variances and would be located within the road right-of-way, whereas a garage on the south side of the road would conform with the shore and floodplain setback requirements and could be located outside of the road right-of-way. Therefore, a garage on the south side of the road would be more conforming than the proposed garage on the north side of the road. In addition, removing the existing "bath house and storage building" would remove a non-conforming building from the property.*

The motion was seconded by Mr. Bartholomew and carried unanimously with four yes votes.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship, that the property has unique physical conditions which prevent compliance, and that granting the requested variances would not be contrary to the public interest. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. The existing "bath house and storage building" provides storage on the property for lawn care equipment and other items and, although it may be desirable to have a garage for vehicle storage, a reasonable use of the property exists without the proposed garage. Approval of the requested road setback variance would result in the construction of a front-entry detached garage located only three ft. from the pavement, which would be a safety hazard and contrary to the public interest. The safety hazard could be decreased by locating the proposed garage farther from the road, but that would be difficult, given the steep slopes on the north side of the property, and would only result in an

even more non-conforming shore and floodplain setback. Therefore, it is felt that the approval of the requested variances and special exception to permit the location of a detached garage on the north side of the road would not be in conformance with the purpose and intent of the Ordinance.

The petitioners are encouraged to consider the possibility of replacing the “bath house and storage building” with a detached garage on the south side of the road. While this would still require a special exception from the maximum permitted accessory building floor area ratio and variances from the road setback, floor area ratio, and open space requirements, a garage on the south side of the road would not require shore and floodplain setback variances and could be located slightly farther from the road.

**BA03:068 NORBERT MIKULA (Gemini Builders)**  
**(Mr. and Mrs. Paul Waggoner – Owners)**

This request was withdrawn by the petitioner.

**BA03:064 DANIEL WILLEMS**  
**(Bill Callahan – Owner)**

Mr. Tarmann *I move to approve the request in accordance with the staff's recommendation, as stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew. After discussion, Mr. Bartholomew withdrew his second and Mr. Tarmann revised his motion as follows.

Mr. Tarmann *I move to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the elimination of Condition #1.*

The revised motion was seconded by Mr. Bartholomew and carried unanimously with four yes votes.

The staff's recommendation was for approval, with the following conditions:

1. Prior to the issuance of a zoning permit for a detached garage, the non-conforming patio on the lake side of the 8 ft. x 10 ft. wooden shed near the lake must be removed.
2. The non-conforming 8 ft. x 10 ft. wooden shed near the lake must be removed from the property or relocated to a conforming location, no later than six (6) months after the date of issuance of a zoning permit for a detached garage.
3. Unless an offset variance is granted to permit the non-conforming 7 ft. 4 in. x 9 ft. 2 in. shed on the north side of the residence to remain less than 10 ft. from the residence, it must be removed from the property or relocated to a conforming location, no later than six (6) months after the date of issuance of a zoning permit for a detached garage.
4. If both existing sheds are to be retained, the Town of Merton Plan Commission must approve the addition of a third detached accessory building and documentation of that approval must be

submitted to the Planning and Zoning Division staff, prior to the issuance of a zoning permit for a detached garage.

5. The total floor area of the main level of the proposed garage and any other detached accessory buildings remaining on the property may not exceed 807 sq. ft., which is 3% of the lot area. *Note: This will permit construction of the proposed detached garage only if both existing sheds are removed from the property. If only the smaller shed is retained, the footprint of the detached garage would need to be reduced to a maximum of 740 sq. ft. If only the larger shed is retained, the footprint of the detached garage would need to be reduced to a maximum of 727 sq. ft. If both sheds are retained, the footprint of the detached garage would need to be reduced to a maximum of 660 sq. ft.*
6. If either of the existing sheds are to be retained, revised plans for the detached garage, with a footprint in conformance with the above condition, must be submitted to the Planning and Zoning Division staff, prior to the issuance of a zoning permit.
7. Prior to the issuance of a zoning permit, a stake-out survey, showing the location of the proposed detached garage, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. If the petitioner elects to relocate one or both of the wooden sheds to a conforming location, the proposed location(s) of the shed(s) must also be shown on the stake-out survey. *Note: A conforming location for the sheds would be at least 75 ft. from the 100-year floodplain (elevation 960 ft. above mean sea level), at least 10 ft. from the residence, and at least 20 ft. from the private road. One of the sheds could be as close as 5 ft. to the side lot lines, but if both are retained, the other shed must be at least 16 ft. 8 in. from the side lot lines.*
8. A "preliminary site evaluation" of the proposed detached garage and the septic system must be conducted by the Environmental Health Division. Prior to the issuance of a zoning permit, evidence must be submitted to the Planning and Zoning Division staff that the Environmental Health Division has no objection to the proposed garage, and that it meets all required minimum separation distances and would not have an adverse effect on the operation of the private waste disposal system. If that cannot be done, a sanitary permit for a new waste disposal system must be issued, and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a zoning permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Exceeding the maximum permitted accessory building floor area ratio requires only a special exception, rather than a variance, which does not require the demonstration of an unnecessary hardship. The approval of a special exception from the accessory building floor area ratio, with the recommended conditions, will allow the construction of a detached garage that would conform with the accessory building floor area ratio requirements of the Ordinance, were it not for the storage area in the exposed lower level. Due to the steep terrain, any garage in a conforming location on the property would need to have an exposed lower level and allowing that exposed lower level to be utilized, provides additional storage area that is badly needed because of the limited basement storage area in the residence. Further, the approval of a special exception from the accessory building floor area ratio requirement, with the recommended conditions, will result in the elimination of two non-conforming structures. Therefore, the

approval of a special exception from the accessory building floor area ratio requirement, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA03:065 STEPHEN & COLLEEN STENHOLT**

Mr. Bartholomew

*I make a motion to adopt the staff's recommendations, as stated in the Staff Report, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schultz and carried unanimously with four yes votes.

The staff's recommendation was for approval, with the following conditions:

1. The residence must be floodproofed to the flood protection elevation (901.99 ft. above mean sea level) in accordance with the requirements set forth in Sections 11.02a (1) (B) 1 (b) (c) (e) and (f) of the Waukesha County Shoreland and Floodland Protection Ordinance (see Exhibit "B"). Plans for floodproofing the residence must be prepared by an architect or professional engineer, registered in the State of Wisconsin, and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit.
2. The non-conforming detached garage and the non-conforming cottage near the road must be removed from the property no later than one (1) year from the date of issuance of a zoning permit to remodel the residence. The garage may be replaced with a new detached garage or with an attached garage, provided the new garage is no larger than 24 ft. x 30 ft., conforms with the building height requirements, and is located in conformance with the offset and road setback requirements. The new garage may not contain an upper-level storage area unless that upper-level storage area is only accessible via a pull-down staircase. *Note: This would result in a floor area ratio of 24.1%.*
3. If a new, detached garage is constructed, the floor of the garage must be at an elevation of at least one foot above the 100-year floodplain elevation (900.9 ft. above mean sea level). If an attached garage is constructed, the floor of the garage must be at or above the flood protection elevation (901.9 ft. above mean sea level).
4. Prior to the issuance of a zoning permit for either an attached or detached garage, a complete set of plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a zoning permit for either an attached or detached garage, a "preliminary site evaluation" of the proposed garage and the septic system must be conducted by the Environmental Health Division and certification must be submitted to the Planning and Zoning Division staff that they have no objection to the proposed garage, that it meets all required minimum separation distances, and that it would not have an adverse effect on the operation of the private waste disposal system. If that cannot be done, a sanitary permit for a new waste disposal system must be issued, and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a zoning permit for a new garage.
6. If the existing patio is required to be removed in order to floodproof the residence, it may be replaced with a new patio or deck, provided the new patio or deck is no larger than the existing patio shown on the Plat of Survey submitted with the application (see Exhibit "A").

7. No retaining walls will be permitted within 75 ft. of the lake, unless they are necessary to protect any of the mature trees on the property that may otherwise be adversely affected by filling required to floodproof the residence.
8. Prior to the issuance of a zoning permit for an attached or detached garage, a stake-out survey showing the location and elevation of the proposed garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
9. Upon completion of a new foundation for the residence or for any attached or detached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions. A copy of that certification must be submitted to the Town of Merton Building Inspector and the Planning and Zoning Division staff, prior to proceeding with construction.
10. In order to ensure the floodproofing of the residence or the construction of an attached or detached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 8.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will not adversely affect the adjacent property owners or the lake and it is not contrary to the public interest. The approval of this request, with the recommended conditions, will allow a reasonable use of the property and will result in the floodproofing of the residence and the removal of a non-conforming garage and "cottage". Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance, which is to allow reasonable use of previously developed floodplain areas, consistent with sound floodplain management practices that will prevent further potential damage as a result of a 100-year flood event.

**BA03:057 GAYLE R. KUGLER (held in abeyance from July 9, 2003)**

Mr. Ward

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with Condition #2 modified to read as follows:*

*The existing 682 sq. ft. detached garage must be reduced in size to a maximum of 22 ft. x 24 ft. and modified so that it is no closer than 7.5 ft. to the east lot line, with the overhang on the east side not to exceed 1 ft. in width.*



*The reasons, shall be as stated in the Staff Report, with the second sentence modified to read as follows:*

*Removing the eastern portion of the existing detached garage, which is non-conforming with respect to offset from the east lot line, would make the garage more conforming because the offset from the east lot line would be increased from 1.7 ft. to 7.5 ft., and decreasing the size of the detached garage would reduce the accessory building floor area ratio to approximately 3%.*

The motion was seconded by Mr. Bartholomew and carried with three yes votes. Mr. Tarmann voted no.

The staff's recommendation was for approval, with the following conditions.

1. The garage and addition must not be located any closer than 20 ft. from the side lot lines and must comply with the floor area ratio and open space requirements of the District. The garage and addition must not be located any closer than 23 ft. from the established road right-of-way (20 ft. in width). If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines and road setback as the overhangs exceed two (2) ft. in width.
2. The existing 682 sq. ft. detached garage must be removed from the property, upon occupancy by the Town of Merton Building Inspector for the proposed construction.
3. Prior to the issuance of a zoning permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
4. Prior to the issuance of a zoning permit, a stake-out survey showing the location of all existing and proposed structures including any appurtenances, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. In order to ensure the construction of the addition and removal of the existing garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 4.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the petitioner's request, with the recommended conditions would require a road setback variance, however, would put the property in a more conforming situation overall. The

existing detached garage, which is non-conforming to the offset, only 1.7 ft. from the east lot line, and with the boathouse, exceeds the accessory building floor area ratio, would be removed from the property. The petitioner would then be allowed a reasonable addition for additional storage, attached to the residence, which would still be located 23 ft. from the established road right-of-way, which allows enough room for a driveway and would not impact traffic along the minor road. The Town and County have already determined that the road would not be further improved in any way, which would require the right-of-way to be any wider than 20 ft. Therefore, allowing the petitioner to construct a garage exceeding the road setback requirements would be more beneficial to the general desirability of the neighborhood than allowing a detached structure to remain significantly too close to the side lot line. The location of the septic system on the property inhibits the construction of a new garage in a conforming location on the property. Therefore, granting the requested variance with the recommended conditions would be in conformance with the purpose and intent of the Ordinance.

#### **OTHER ITEMS REQUIRING BOARD ACTION:**

##### **BA03:049 GREG & JAYNE PROUDLOVE**

Mr. Tarmann

*I make a motion to amend our decision of June 25, 2003, and approve an offset variance to allow a 22 ft. x 26 ft. detached garage to be located a minimum of 5 ft. from the east lot line and a minimum of 8 ft. from the north lot line, in accordance with the staff's recommendation.*

The motion was seconded by Mr. Ward and carried unanimously with four yes votes.

#### **ADJOURNMENT:**

Mr. Bartholomew

*I make a motion to adjourn this meeting at 10:18 p.m.*

The motion was seconded by Mr. Tarmann and carried unanimously with four yes votes.

Respectfully submitted,

Mary E. Finet  
Secretary, Board of Adjustment